

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH : BANGALORE.

DATED THIS THE FOURTH DAY OF DECEMBER, 1986.

Present: Hon'ble Shri Justice K.S. Puttaswamy,
Vice-Chairman,

and

Hon'ble Shri L.H.A. Rego, Member.

APPLICATION No. 1400/86 (T)

(W.P. No. 2814/84)

Between:

S. Rangarajan,
42, 27th Cross,
4th Block, Jayanagar,
Bangalore.

...Applicant.

(Shri S. Mahesh, Advocate)

and

1. Director General of Works,
Central P.W.D.,
Govt. of India.,
Nirman Bhavan,
New Delhi.
2. Government of India,
Ministry of Works & Housing,
by its Secretary,
Nirman Bhavan,
New Delhi.

...Respondents.

(ShriM. Vasudeva Rao, Addl. C.G.S.C.)

This application having come up for hearing before
this Tribunal, today, Hon'ble Shri Justice K.S. Puttaswamy,
Vice-Chairman, made the following:


O R D E R

In this transferred application received from
the High Court of Karnataka under Section 29 of the

Administrative Tribunals Act, 1985 (the Act), the applicant has sought for a direction to the respondents to refix his pay as on 31.5.1979 and make payments of arrears due thereon.

2. Prior to 28.2.1976, the applicant was working as an Assistant Engineer (Civil) ('AE') in the Central Public Works Department ('CPWD') of Government of India. On 28.2.1976, the Engineer-in-Chief ('EC'), CPWD, promoted the applicant as an Executive Engineer (Civil) ('EE') and posted him to Andaman. But on a representation made by the applicant, the EC modified his order dated 28.2.1976 relating to posting only and later on posted him as EE or as Deputy Manager (Civil Engineering) to the Food Corporation of India ('FCI'). On the basis of that order, the applicant reported for duty at the Hyderabad office of FCI on 28.6.1976 and continued to function there till 31.5.1979 on which day he was repatriated and posted as EE to the Valuation Cell of the Income Tax Department, Bangalore (I.T. Dept.), where he functioned till 30.6.1981 on which day he attained superannuation and retired from service.

3. When the applicant was working at FCI, he had opted to draw the pay scale of AE with deputation allowance allowed thereto. For the period he worked from 28.6.1976 to 31.5.1979 at the FCI, the applicant has no grievance.




4. But when the applicant worked in I.T. Dept., for some inexplicable reason, he was treated as an AE and was permitted to draw the time-scale of pay and allowances attached to that post only, and not the time-scale of pay and allowances due to him as an EE, on which basis his pension has also been fixed, on his retirement from service on 30.6.1981.

5. On making a series of representations to remedy the injustice caused to him, which did not evoke favourable response, the applicant moved the High Court on 8.2.1984 for the reliefs sought in the application.

6. The applicant has asserted that he was repatriated as EE only from FCI to the I.T. Dept., and had worked as EE only till he retired from service on 30.6.1981, and therefore, he was entitled for payment of salary and other allowances attached to that post, and for settlement of his pension on that basis.

7. In their statement of objections filed before the High Court, the respondents have asserted that as on 3.5.1976, the EC had cancelled the promotion of the applicant made by him on 28.2.1976 (Annexure-R.1) and therefore he was not entitled for any of the reliefs. Without, however, specifically denying the assertion of the applicant that he was reposted to the I.T. Dept., as an EE and worked as an EE till he retired from




service on 30.6.1981, the respondents have pleaded that there was inordinate delay in his approaching the High Court, on which ground itself the reliefs sought by him should also be rejected.

8. Shri S. Mahesh, learned counsel for the applicant, contends that his client, on and from 28.6.1976 to 30.6.1981 on which day he retired from service, in law and fact had only functioned as an EE, and was therefore entitled for payment of salary and pension of that post, and their denial by the respondents was illegal, unjust and inequitable.

9. Shri M. Vasudeva Rao, learned Additional Standing Counsel for the respondents, in justifying the inaction, contends that the order made by the EC (Annexure-R.1) was on 3.5.1976 had become final and that the claim made before the High Court on 8.2.1984 was highly belated, on which ground itself, this Tribunal, which had stepped into the shoes of the High Court, should reject the same.


10. On 3.5.1976, the EC made an order (Annexure-R.1) cancelling the promotion and posting of the applicant. But we now find on an examination of all the facts and circumstances and the records produced before us that that order only meant to cancel the posting of the applicant to Andaman and not the promotion given to him in his own turn. Without any doubt, the cancellation



of the promotion in that order at the highest level was an inadvertent mistake which also did not really operate against the applicant from the date of his promotion to the date of his retirement from service. If that is so, we must necessarily ignore the order of the EC made on 3.5.1976 in so far as it related to the cancellation of the promotion of the applicant and regulate the matters on that basis only, and on no other basis. From this, it follows that the promotion of the applicant stood till he retired from service. What now remains to be examined is the consequences flowing from the same.


11. Whatever be the legitimacy of the claim for difference of salary, the same, unfortunately, is clearly barred by time, and cannot be upheld by us, that too in a writ petition presented as late as on 8.2.1984. We are, therefore, of the view that the claim of the applicant for the arrears of salary for the period from 1.6.1979 to 30.6.1981 cannot be upheld by us. But this rejection cannot, by itself, be a ground to reject the claim of the applicant for refixation of his pay as on 1.6.1979 and refixation of his pension as on 1.7.1981.

12. We have earlier noticed that on repatriation from the FCI, the applicant had actually worked as an EE, performed the duties of EE and retired as an EE on 30.6.1981. When that is so, notwithstanding the denial of arrears of salary from 1.6.1979 to 30.6.1981, the



refixation of his pay should only be regulated in terms of Rule 22 of the Fundamental Rules ('FR 22'). In other words, the pay of the applicant as on 1.6.1979 must be fixed as if he was an EE on that date in terms of FR 22. When once the pay of the applicant is refixed as on 1.6.1979 as if he was an EE, his pension must also be refixed as if he had retired as an EE on 30.6.1981. We are of the view that the applicant should be paid the arrears of pension from 1.7.1981 itself, without applying the rigor of limitation, if any, as in the cases of arrears of salary.

13. In the light of our above discussion, we make the following orders and directions:

- (1) We declare that the applicant was repatriated from the FCI to the Valuation Cell of the I.T. Dept., of the Government of India on 1.6.1979 as an Executive Engineer, and has worked and retired in that capacity only on 30.6.1981. But notwithstanding this declaration, we dismiss this application in so far as it claims arrears of salary from 1.6.1979 to 30.6.1981;
 - (2) We direct the respondents to refix the pay of the applicant as if he was an EE as on 1.6.1979 in terms of FR 22; and
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- (3) We direct the respondents to refix the pension of the applicant as on 1.7.1981 on the basis of refixation of his pay as an EE as on 1.6.1979, and make available the difference of pension due thereon on and from 1.7.1981 with all such expedition as is possible in the circumstances of the case, and in any event, within six months from the date of receipt of this order.

14. Application is disposed of in the above terms. But in the circumstances of the case, we direct the parties to bear their own costs.

MS. R. M. M.
VICE CHAIRMAN
4/12/80

[Signature]
MEMBER (A)
4.12.80

dms.